

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

ANDREA GORDON

DEFENDANTS

THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT

(b) County of Residence of First Listed Plaintiff NAPA
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant C&C SAN FRANCISCO
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Howard Moore, Jr. (510) 542-7172
Moore & Moore
1563 Solano Avenue, #204
Berkeley, CA 94707-2116

68-3630BZ

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input checked="" type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition Habeas Corpus:		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Title VII, 42 USC Section 1981, & Cal. Gov. Code sections 12940(a) and 12940(h)

Brief description of cause:

Race, Gender, and Retaliatory denial of promotions

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND \$ ATP

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

 PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
 "NOTICE OF RELATED CASE"
IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)
☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

July 28, 2008

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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 NORTH DISTRICT OF CALIFORNIA

BZ

11 ANDREA GORDON,

12 Plaintiff,

13 vs.

14 THE BAY AREA AIR QUALITY
15 MANAGEMENT DISTRICT,

16 Defendant.

CV No. 08

3630

COMPLAINT FOR DAMAGES
[Race or color & gender
discrimination in promotions &
retaliation)

JURY TRIAL DEMANDED

17 I. JURISDICTION AND VENUE

18 1. This civil action is brought pursuant to Title VII of the Civil Rights Act of 1964,
19 as amended (42 United States Code §2000e-2(a) and 2000e-3(a), to remedy race or color, gender,
20 and retaliatory discrimination in employment. This civil action is also brought pursuant to the
21 Civil Rights Act of 1866, as amended (42 United States Code §1981), to remedy race or color
22 and retaliatory discrimination in employment. Jurisdiction over the complaint is conferred by 28
23 United States Code §1331(a) and §1343(a)(4) and by Title VII of the Civil Rights Act of 1964, as
24 amended (42 United States Code §2000e-5). Equitable and other relief is sought under 42 United
25 States Code §2000e-5(g).

26 2. Jurisdiction over Plaintiff's claims which arise under state law is invoked pursuant
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1 to 28 United States Code §1367. The state law claims which arise from the same core facts are
2 so related to the claims within this Court's original jurisdiction that they form a part of the same
3 case and controversy under Article III of the United States Constitution.

4 3. Venue is properly laid within this judicial district. The acts or omissions to act
5 which comprise the acts of employment and retaliatory discrimination complained of herein
6 occurred within the territorial boundaries of this judicial district at 939 Ellis Street, in the City
7 and County of San Francisco, California.

8 II. PARTIES

9 4. Plaintiff named herein is: ANDREA GORDON ("Plaintiff or Andrea"), an adult
10 African American, female citizen of the United States who resides in Napa, California.

11 5. Defendant named herein is: THE BAY AREA AIR QUALITY MANAGEMENT
12 DISTRICT ("BAAQMD"). BAAQMD is a local public agency formed by the nine counties
13 which surround the San Francisco Bay, Alameda, Contra Costa, Marin, Napa, San Francisco, San
14 Mateo, Santa Clara, Solano, southwest Solano, and southern Sonoma counties. BAAQMD is
15 governed by a 22-member Board of Directors, who are elected from each of the nine Bay Area
16 counties in proportion to its population. BAAQMD is supported by permit-related revenues,
17 surcharges levied on motor vehicles registered in the 9-county area, county property taxes, federal
18 grants, and other miscellaneous sources of income. BAAQMD regulates stationary sources of
19 emissions of air pollution within the 9-county area. BAAQMD is an employer within the
20 meaning of Title VII of the Civil Rights Act of 1964, and for 20 or more weeks in the current or
21 preceding calendar year, it has had 15 or more employees. On information and belief and
22 Plaintiff thereon alleges BAAQMD employs in excess of 350 staff members.

23 III. FACTUAL ALLEGATIONS

24 6. ANDREA is employed as a Senior Environmental Planner in the Outreach and
25 Incentives Division of BAAQMD at its headquarters in San Francisco. Among her duties,
26 ANDREA identifies grant projects that will reduce motor vehicle emissions within the 9-county
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1 area. She has worked for BAAQMD for the past 14 years. She holds an undergraduate and a
2 master's degree.

3 7. ANDREA timely applied for promotion to the position of Supervising
4 Environmental Planner. She was qualified for the position but BAAQMD did not select her.
5 From the date of ANDREA's non-selection for the position of Supervising Environmental
6 Planner on January 13, 2006, to the present, ANDREA has applied for each promotional vacancy
7 for which she was qualified but she was not selected.

8 8. In June of 2006, ANDREA received a letter from BAAQMD which informed her
9 that she had not been selected for a Supervising Environmental Planner position and that her
10 name would be placed on a list to be considered for other available positions which were in the
11 same classification as the Supervising Environmental Planner position. Late in July of 2006,
12 ANDREA met with the Director of Outreach and Incentives and inquired why she had not been
13 considered for another promotion to the position of Supervising Environmental Planner. The
14 Director informed ANDREA that he did not know she was interested, even though ANDREA's
15 name was supposedly on a list of persons interested in being considered for promotion to
16 positions in that job classification. The Director did not consider ANDREA even though she was
17 featured in BAAQMD's *Annual Report* as one of its outstanding employees and to illustrate its
18 commitment to being an 'Equal Opportunity Employer,' who does not discriminate against
19 racial and ethnic minorities and women.

20 9. Within the past 2 and a half years, BAAQMD has pursued a practice of promoting
21 anyone except ANDREA. Beginning January 13, 2006 and continuing through March 13, 2008,
22 ANDREA applied for nine (9) promotions for which she was qualified, and BAAQMD selected
23 someone else of a different race or gender whose qualifications were no better than ANDREA's.
24 The positions for which ANDREA was not selected during this period, include, but are not
25 limited to, the following:
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1	Date	Position Title	Person Selected	Race/Gender
2	01/13/2006	Supervising Environmental Planner	David Wiley	White/male
3				
4	02/13/2006	Principal Environmental Planner	Abby Young	White/female
5				
6	06/15/2007	Supervising Public Information Officer	Jeff Weiss	White/male
7	08/07/2007	Air Quality Program Manager	Damian Breen	White/male
8	08/16/2007	Supervising Environmental Planner	Anthony Fournier	Hispanic/male
9				
10	11/01/2007	Advanced Project Advisor	Virginia Lau	Asian/Female
11	02/25/2008	Supervising Air Quality	Tony Gambella	White/male
12	03/05/2008	Principal Environmental Planner	Victor Douglas	AA/Male
13	03/13/2008	Public Information Officer	Unknown	Unknown/male

14 10. After ANDREA filed a charge of discrimination against BAAQMD with the
15 EEOC and expressed her opposition to discriminatory practices to management, she was
16 disciplined and given oral and written reprimands on the slightest pretext. On November 12,
17 2007, Damian Breen, Grants Programs Manager, orally reprimanded ANDREA for allegedly
18 being disrespectful to her supervisor, David Wiley. On November 28, 2007, Damian Breen gave
19 ANDREA a written reprimand for the same alleged misconduct which he placed in her personnel
20 file.

21 11. On March 25, 2008, Damian Breen reprimanded ANDREA in an email for
22 conduct which he claimed was disrespectful toward her immediate supervisor.

23 12. On July 28, 2008, Damian Breen issued a written reprimand to ANDREA for
24 raising issues with Mr. Wiley in emails concerning his practice of overburdening her with work
25 and giving her unreasonable and unrealistic time-frames in which to complete her assignments. In
26 his written reprimand of July 28, Mr. Breen admonished ANDREA that she could face more
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1 serious disciplinary action if she continued to protest the mistreatment to which she was being
2 subjected.

3 13. Prior to the time ANDREA engaged in protected activity, BAAQMD always
4 commended her on her work. During her 14-year employment with BAAQMD, in which she was
5 assigned to the same department, ANDREA often took on extra duties and responsibilities when
6 her section was understaffed and the workload excessive. Over the years, ANDREA helped train
7 several new supervisors and staff in her section, and she was always helpful in the administration
8 of her section.

9 14. As a proximate result of BAAQMD's actions as alleged herein, ANDREA was
10 humiliated, hurt and injured in her health, strength and activity, and suffered and continues to
11 suffer loss of reputation, goodwill and standing in the community, shame and embarrassment,
12 hurt feelings, mental anguish and suffering, anxiety, depression, loss of enjoyment of life, and a
13 general loss of self-esteem and well being. The value of such non-economic damages and losses
14 will be established in accordance with proof at trial.

15 15. As a further proximate result of the acts or omissions of BAAQMD, ANDREA
16 has also suffered significant loss of income and employment benefits. The value of such
17 economic damages and losses will be established in accordance with proof at trial.

18 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19 16. On June 20, 2008, the Civil Rights Division of the United States Department of
20 Justice issued ANDREA notice of her right-to-sue on her charge of discrimination which she
21 filed with the EEOC. On the same date and by the same letter, the Civil Rights Division also
22 notified BAAQMD that it issued notice of right to sue.

23 17. On information and belief and ANDREA thereon alleges that the EEOC crossed-
24 filed her complaint with the California Department of Fair Employment and Housing (DFEH).
25 Pursuant to Government Code §12965(d)(1) and (2), the time in which ANDREA could bring this
26 action under state law has not lapsed.

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V. CLAIMS FOR RELIEF

A. FIRST CLAIM FOR RELIEF - RACE OR COLOR DISCRIMINATION

18. Defendant intentionally violated 42 United States Code §2000e-2(a) by refusing and failing to promote Plaintiff on the grounds of her race (African American) or her color (Black).

WHEREFORE, Plaintiff prays for judgment as set forth below.

B. SECOND CLAIM FOR RELIEF - GENDER/SEX DISCRIMINATION

19. Plaintiff incorporates as though fully set forth and alleged in this Second Claim for Relief paragraphs 1 through 16, above.

20. Defendant intentionally violated 42 United States Code §2000e-2(a) by refusing and failing to promote Plaintiff on the grounds of her gender/sex (female).

WHEREFORE, Plaintiff prays for judgment as set forth below.

C. THIRD CLAIM FOR RELIEF - RETALIATION

21. Plaintiff incorporates as though fully set forth and alleged in this Third Claim for Relief paragraphs 1 through 16, above.

22. Defendant intentionally violated 42 United States Code §2000e-3(a) by retaliating against Plaintiff for participating in protected proceedings and for opposing employment practices made unlawful by Title VII of the Civil Rights Act of 1964, *as amended*.

WHEREFORE, Plaintiff prays for judgment as set forth below.

D. FOURTH CLAIM FOR RELIEF - RACE OR COLOR DISCRIMINATION

23. Plaintiff incorporates as though fully set forth and alleged in this Fourth Claim for Relief paragraphs 1 through 15, above.

24. Defendant intentionally violated the Civil Rights Act of 1866, *as amended* (42 United States Code §1981) by refusing and failing to promote Plaintiff on the grounds of her race (African American) or her color (Black).

WHEREFORE, Plaintiff prays for judgment as set forth below.

E. FIFTH CLAIM FOR RELIEF - RETALIATION

25. Plaintiff incorporates as though fully set forth and alleged in this Fifth Claim for Relief paragraphs 1 through 15, above.

25. Defendant intentionally violated the Civil Rights Act of 1866, *as amended* (42 United States Code §1981) by retaliating against Plaintiff for participating in protected proceedings and for opposing employment practices made unlawful by Title VII of the Civil Rights Act of 1964, *as amended*, and Civil Rights Act of 1866, *as amended* (42 United States Code §1981)

WHEREFORE, Plaintiff prays for judgment as set forth below.

F. SIXTH CLAIM FOR RELIEF - RACE OR COLOR DISCRIMINATION

26. Plaintiff incorporates as though fully set forth and alleged in this Sixth Claim for Relief paragraphs 1 through 17, above.

27. Defendant intentionally violated California Government Code 12940(a) by refusing and failing to promote Plaintiff on the grounds of her race (African American) or her color (Black).

WHEREFORE, Plaintiff prays for judgment as set forth below.

G. SEVENTH CLAIM FOR RELIEF - GENDER/SEX DISCRIMINATION

28. Plaintiff incorporates as though fully set forth and alleged in this Seventh Claim for Relief paragraphs 1 through 17, above.

29. Defendant intentionally violated California Government Code 12940(a) by refusing and failing to promote Plaintiff on the grounds of her gender/sex (female).

WHEREFORE, Plaintiff prays for judgment as set forth below.

H. EIGHTH CLAIM FOR RELIEF - RETALIATION

30. Plaintiff incorporates as though fully set forth and alleged in this Eighth Claim for Relief paragraphs 1 through 17, above.

31. Defendant intentionally violated California Government Code 12940(h) by

1 retaliating against Plaintiff for participating in protected proceedings and for opposing
2 employment practices made unlawful by Title VII of the Civil Rights Act of 1964, *as amended*,
3 the Civil Rights Act of 1866, *as amended* (42 United States Code §1981), and the California Fair
4 Employment and Housing Act.

5 WHEREFORE, Plaintiff prays for judgment as set forth below.

6 **VI. PRAYERS FOR RELIEF**

7 WHEREFORE, Plaintiff respectfully prays:

8 A. For an award of equitable and injunctive relief in the form of reinstatement, back
9 pay and front pay, including an award of the reasonable value of lost of fringe benefits;

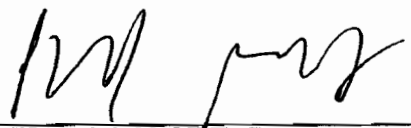
10 B. For an award of compensatory and special damages according to proof at trial;

11 C. For an award of reasonable attorney's fees, including litigation expenses, and
12 costs pursuant to 42 United States Code §1988 and California Government Code §12965(b);

13 D. For an award of prejudgment interest; and

14 E. For such other and additional relief as the Court deems appropriate.

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17 Date: July 28, 2008




HOWARD MOORE, JR.
Attorney for Plaintiff

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20 **JURY DEMAND**

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22 Pursuant to Rule 38(b) Fed. R. Civ. P., Plaintiff demands trial by jury on all claims for
23 which a jury is permitted.

24
25 Date: July 28, 2008



HOWARD MOORE, JR.
Attorney for Plaintiff